IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

WP(C).No. 25504 of 2007(J)

AGAINST THE ORDER DATED IN SUCCESSION. IN OP.4/2005 of MUNSIFF COURT,ATTINGAL

.....

PETITIONER: 5TH PLAINTIFF.

DEVARAJAN, S/O. NARAYANAN,
RTD. POSTMAN, MELEVILA VEEDU, PAZHAYAKUNNEL VILLAGE, KILIMANOOR.

BY ADV. SRI.R.ANILKUMAR

RESPONDENTS:

1. ANANDAN, S/O. NARAYANAN,
RTD. TEACHER, SHEEBALAYAM, VAZHAPILLI LANE, AVANAVANCGERRY VILLAGE, VAZHAPPILLY LANE, ATTINGAL.

2. SUBHASHINI, D/O. NARAYANAN,
EDAVANKADU, KUNNUMMEL, KILIMANOOR.

3. SULOCHANA, D/O. NARAYANAN,
RESIDING AT CHARUVILA VEEDU, PAZHAYAKUNNEL VILLAGE, KILIMANOOR.

4. NALINI, D/O. NARAYNAN,
RESIDING AT CHARUVILA VEEDU, PAZHAYAKUNNEL VILLAGE, KILIMANOOR.

5. PRABHAVATHY, D/O. NARAYANAN,
RESIDING AT PANAMBILLY NAGAR, NEAR KOCHI.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SRI.V.VINAY MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P(C) 25504/07

PETITIONER'S EXTS:

EXT.P1: THE TRUE PHOTOCOPY OF THE FIXED DEPOSIT RECEIPT NO: 4674448 OF THE FEDERAL BANK, KILIMANOOR DT. 7.10.1998

EXT.P2: -DO- OF THE PETITION OP (SUCC) NO: 4/05 BEFORE THE MUNSIFF'S COURT, ATTINGAL

EXT.P3: -DO- PHOTOCOPY OF THE ORDER IN OP (SUCC) NO: 4/05

jj /TRUE COPY/

P.A. to Judge

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 25504 OF 2007

= = = = = = = = = = = = = = = = =

Dated this the 19th day of November, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Munsiff, Attingal in OP(Succession) 4/05. the brief facts necessary for the disposal of the writ petition are stated as follows. The petitioners and the respondent are brothers and sisters of deceased Divakaran. The question in dispute is that there was a fixed deposit in the joint names of Divakaran and his brother, the 5th petitioner, namely Devarajan. Divakaran died and now an application is filed by five of the persons contending that out of the deposit of Rs.90,000/- 50% of the amount exclusively belong to Devarajan as a joint deposit holder and the remaining 45,000/- has to be divided into six and for the said purpose prays for issuance of a succession certificate.

2. The Court below observed that it is contend that Divakaran was a mentally retarded person and an

arrangement was made to operate the account jointly by himself and the 5th petitioner. Documents were produced from the Bank which would go to show that Devarajan, the 5th petitioner was dealing in the name of Divakaran and there is merit in the contention of the respondent that the entire amount is not included in the present petition. When it is in the joint names unless it is proved that there was a manifest intention for the other person that it must go to the second person under law, the second person can hold it only as a trustee and he is liable to be the legal representative of the deceased. This position has been considered by the Madras High Court in the decision reported in ***Kushaldas v. Mohanarangam (I (1997) Banking Cases 34)***. It was a case where there was a joint deposit. The deposit was in the name of one Muthukrishna Naidu who was more than 80 years and also in the name of the first defendant. The first defendant contended that he has got exclusive right over the

amount. The High Court of Madras considered the impact of the decision reported in ***Indranarayana v. Roop Narayan (AIR 1971 SC 1962)*** and held that in India "there is no presumption of advancement but if there had been satisfactory evidence to show that the transfers in question are genuine and further that Dr.Pandit intended that the amounts in question should go to the 1st defendant exclusively after his death, we would have held that the advancement put forward had been satisfactorily proved and the presumption rebutted." It is seen from the records available before the Bank that it was Devarajan who was operating the account which strengthens the case of the mental retardation of the deceased Divakaran and therefore just because the fixed deposit was in the joint names of two persons it will not confer title on Devarajan. Devarajan at the most can be a trustee for the other beneficiaries and therefore I do not find any mistake in the finding of the Court

below in coming to the conclusion that the entire amount of Rs.90,000/- has to be pooled among the sharers. Therefore, the order of the Court below in issuing a succession certificate for Rs.90,000/- is upheld and this writ petition is dismissed.

M.N. KRISHNAN, JUDGE.

ul/-